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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
KANTAMNENI, SHOBHA	
ART UNIT	PAPER NUMBER
1627	

NOTIFICATION DATE	DELIVERY MODE
07/02/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
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Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/016,964	RIEDEL ET AL.	
	Examiner	Art Unit	
	Shobha Kantamneni	1627	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *NONE*.
   Claim(s) objected to: _____.
   Claim(s) rejected: *18-41,44 and 45*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See page 2.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Shengjun Wang/
Primary Examiner, Art Unit 1627

Continuation of 11: Applicant's arguments have been considered, but not found persuasive as discussed in the previous office actions, and those found below. All the rejections made in the final office action are maintainted.

The rejection of Claims 18-20, 25, 27-33, 35, 36 under 35 U.S.C. 102(b) as being anticipated by Beutler et al. (US 4,808,388, PTO-1449).

Applicant argues that "the "Polysorbate 20" employed in Examples 5/la and 5/lb of BEUTLER is expressly identified in BEUTLER as "Sorbitan monolaurate" (see Example 5/la), i.e., not as polyoxyethylene(20) sorbitan monolaurate as alleged by the Examiner. As can be taken from, e.g., http://www.fao.org/ag/agn/iecfa- additives/specs/Monograph/Additive-431.pdf, sorbitan monolaurate is a commercial product which finds use as emulsifier." These arguments have been considered, but not found persuasive because Beutler clearly discloses in Example 5/1b, the employment of polysorbate 20 as the nonionic emulsifier. Polysorbate 20 is a polyoxyethylene derivative of sorbitan monolaurate, and not just sorbitan monolaurate. See
http://chemicalland21.com/specialtychem/perchem/POLYOXYETHYLENE%20SORBITAN%20LAURATE.htm

Applicant argues that "It is not seen that the preparations of Examples 5/la and 5/lb of BEUTLER necessarily comprise from 1% to 90 % by volume of at least one gas".
These remarks have been considered. It is pointed out that the amount of the gaseous propellant is about 1 to 4 % by weight. See column 4, lines 34-44.
Beutler et al. in Example 5/la and Example 5/lb discloses a composition comprising 5 % by weight of TEA-Stearate (Triethanolamine Stearate) i.e wholly or partially neutralized fatty acid instant emulsifier A, 0.5 % by weight of polysorbate 20 (PEG 20 sorbitan monolaurate) i.e instant emulsifier B, 1% by weight of cetyl alcohol i.e instant emulsifier C, lanolin alcohol, 0.25 % of sodium Laureth sulphate, and N20 or CO2 as the gas in an amount of 1 to 4 % by weight, which meets the instant claims.

Applicant's remarks made regarding NetMoneyIN, Inc. v. VeriSign, Inc., 545 F.3d 1359 (Fed. Cir. 2008), it is pointed out that as discussed above Beutler et al. discloses all the elements arranged as in instant composition as in instant Claim 18

The rejection of claims 18-24, 28-31, 34, 36-39, 44 under 35 U.S.C. 103(a) as being unpatentable over Bellon et al. (FR 2,789,397 with English translation of record):

Applicant's arguments regarding PEG-100 stearate glyceryl stearate in Example 1 of BELLON (marketed by SEPPIC Company as glyceryl stearate and PEG-100 stearate) has been considered, it is pointed out again PEG-100 stearate/glyceryl stearate from SEPPIC contains an ester of stearic acid and polyethylene glycol, PEG-100 refers to polyethylene glycol comprising 100 ethylene glycol units. Thus, PEG-100 stearate glyceryl stearate taught by BELLON in Example 1 reads on instant emulsifier B which is a polyethoxylated fatty acid ester. See SEPPIC Brochure, page 13 for PEG-100 stearate/glyceryl stearate, http://www.ggpregnancy.com/sources/july29-2009/montanov-68.pdf

Applicant argues that " BELLON does not even discuss the combination of compounds which allegedly correspond to the present emulsifiers A, B and C, let alone as an emulsifier system, but mentions these compounds separately and for unrelated purposes or not at all." These arguments have been considered, but not found persuasive. Bellon et al. exemplify a facial foam composition or preparation comprising 22% PEG-100 stearate/glyceryl stearate combination from SEPPIC which is a polyethoxylated fatty acid ester in the instant claim 18, componant B: stearate having a chain 18 carbons and 100 of ethoxylation; 12% stearic acid which is a fatty acid in the instant claim 18, component A: stearic acid having a chain 18 carbons; 6% octyldodecanol, which is a fatty alcohol in the instant claim 18, component C having a chain 20 carbons; nitrogen added to the composition in 70% by volume which is one gas in claim 18, and thus meets instant claim limitation 18. See Example 1 and Table 1 (at page 10-11 and 16 of the English translation).

Applicant argues that " the Examiner has failed to provide any evidence that decyl glucoside, i.e., an ether of glucose and decanol, is substantially the same as a fatty alcohol (such as, e.g., the octyldodecanol employed in Example 1 of BELLON)." These arguments have been considered, but not found persuasive. It is pointed out that Example 1 of Bellon comprises octyldodecanol i.e a fatty alcohol, and thus meets instant claim 18 limitation.

The rejection of claims 18-20, 24-25, 28, 30-31, 33-36, 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Penska et al. (EP 0 938 890 or US 5,851,544, PTO-1449, IDS filed on 06/20/2006).

Applcant argument regarding self-foaming or foam-like have been considered, but not found persuasive because Penska discloses instant composition as in claim 18, and thus meets the instant claim limitation.

Applicant argues that "Applicants do not know how the Examiner has calculated the alleged volume percentage of perfluorodecane in the composition of Example 6 of PENSKA based on the indicated weight percentage thereof". It is pointed out that Example 6, 50 wt % of perfluorodecane corresponds to 28.25 % by volume of perfluorodecane, since the density of perfluorodecane = 1.77.